



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 18 2009

Mr. James Lamb, Esq.
Sandler, Reiff & Young, P.C.
300 M Street, S.E.
Suite 1102
Washington, DC 20463

RE: MUR 6159
Baldwin County Education
Association, Saadia Hunter as
President

Dear Mr. Lamb:

On January 23, 2009 the Federal Election Commission notified your clients, the Baldwin County Education Association ("BCEA") and Saadia Hunter, as president, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on December 3, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact April J. Sands, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Sidney Rocke".

Sidney Rocke
Assistant General Counsel

Enclosure
Factual and Legal Analysis

10044260928

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6159

RESPONDENTS:

Baldwin County Education Association
Saadia Hunter, BCEA President
Alabama Education Association
National Education Association
National Education Association Fund for
Children and Public Education

I. INTRODUCTION

The complaint in MUR 6159 makes four basic allegations: first, three affiliated labor organizations solicited involuntary contributions for their separated segregated fund during the 2008 election cycle. Second, an agent of the labor organizations failed to inform the two individual complainants of the political purposes of the fund and of their right to refuse to contribute without reprisal at the time of solicitation. Third, one of the labor organizations used its treasury funds to make contributions. Fourth, three respondents made, and one respondent accepted, contributions in the name of others. Because of the material conflicts between the parties' declarations and affidavits, the small amount at issue, and the gaps in the factual record, the Commission dismisses the allegations and closes the file.

II. FACTUAL SUMMARY

The National Education Association ("NEA") is a nationwide labor organization with more than 3.2 million members, the majority of whom are employed by public school districts, colleges, and universities. AEA/NEA/NEA Fund Response at 1. The National Education Association Fund for Children and Public Education ("NEA

10044260929

10044260930

Fund”) is its federally registered SSF. *Id.* The Alabama Education Association (“AEA”) is the NEA’s state affiliate in Alabama. *Id.* The Baldwin County Education Association (“BCEA”) is a local union that represents teachers employed by the Baldwin County (Alabama) Public Schools, and it is an NEA county affiliate in Alabama. BCEA Response at 1. *Id.* Local, state, or national chapters of unions are affiliated with each other and may serve as collecting agents for the national organization’s SSF. 11 C.F.R. §§ 100.5(g)(3)(ii) and (iii), 110.3(a)(2)(iii), 102.6(b)(1)(ii) and (iii). Therefore, BCEA, AEA, and NEA could all serve as collecting agents for NEA Fund. Saadia Hunter was the President of BCEA at the time the events relevant to the complaint occurred. AEA/NEA/NEA Fund Response at 1. As its president, Ms. Hunter was an agent for BCEA; therefore, she could solicit on its behalf for contributions to the NEA Fund.

The complainants are National Right to Work Legal Defense and Education Foundation, Inc., and Claire Waites and Jeanne Fox, two members of all three affiliated labor organizations. Complaint at Paragraphs 1-3. Ms. Hunter, Dr. Fox, and Ms. Waites provided declarations or affidavits, as did Tiffeny Howard and Kim Williams, two members of the BCEA who also attended the NEA convention as delegates and claim to have witnessed some of the events in question. The complaint’s allegations relate to events at the NEA’s June 30 – July 2, 2008, national convention in Washington D.C., which Fox, Waites, Hunter, Williams, and Howard attended as delegates. The NEA refers to this convention as its Representative Assembly (“RA”). Complaint at Paragraph 9. Prior to the RA, the BCEA approved a budget that included funds to pay costs for their delegates to attend the NEA RA, including travel, hotel, meals, and incidentals.

BCEA Response at 1-2. Ms. Hunter was responsible for bringing with her to the convention a portion of the per person travel allocation balance for the delegates.

According to declarations from Tiffeny Howard and Kim Williams, the AEA State Captain made a verbal solicitation for contributions to the NEA Fund on June 30, 2008, at the end of an AEA meeting at the RA. Howard Declaration at Paragraph 4; Williams Declaration at Paragraph 4. According to Ms. Hunter and Ms. Williams, Dr. Fox crossed paths with Ms. Hunter and Ms. Williams as they were on the way to the line of people making contributions to the NEA Fund. Hunter Declaration at Paragraph 7; Williams Declaration at Paragraph 6. Their declarations continue by saying that Dr. Fox indicated "that she left her purse in her room." *Id.* Ms. Hunter states that she then asked Dr. Fox if she would like Ms. Hunter to make a contribution on her behalf because Ms. Hunter still had the envelope containing Dr. Fox's stipend money in her purse. Hunter Declaration at Paragraph 7. Ms. Hunter recounts that Dr. Fox agreed to let Ms. Hunter submit the contribution on behalf of Dr. Fox, left the room, and came back shortly thereafter and instructed Ms. Hunter to submit a contribution for Ms. Waites also. Hunter Declaration at 9. Dr. Fox was a good friend of Ms. Waites, and they shared a hotel room during the convention. Hunter Declaration at 9. Ms. Williams asserts that she, too, heard Dr. Fox tell Ms. Hunter to submit a contribution on Ms. Waites' behalf. Williams Declaration at Paragraph 8. According to Ms. Waites, the \$100 contribution submitted in her name, which she claims was not authorized by her, has not been refunded by AEA. Waites Affidavit at Paragraph 14.

10044260931

III. ANALYSIS

Based on their allegation that "BCEA included in the expense reimbursements for its delegates to the NEA RA an amount to cover the delegates' contributions" to the NEA Fund, the complainants contend that Ms. Hunter used union money to submit the contributions on behalf of Ms. Fox and Ms. Waites, in purported violation of 2 U.S.C. § 441b(a), which prohibits labor unions from making a contribution or an expenditure in connection with any election for federal office. Complaint at Paragraph 23. All parties agree that Ms. Hunter physically submitted the contributions of Jeanne Fox and Claire Waites to the NEA Fund using the money Ms. Hunter was holding on behalf of these two BCEA delegates, although there is significant disagreement among the parties over whether Dr. Fox gave Ms. Hunter authority to do so.

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person. *See* 2 U.S.C. § 441f. The Commission's regulations seek to prevent deception or the attempt to disguise the true source of money contributed and provide some guidance as to the types of activities the Commission regards as violations. *See* 11 C.F.R. § 110.4(b)(2)(i)-(ii). That type of activity does not appear to be at issue here.

There is no dispute that the Alabama State Captain, when receiving the contributions from Ms. Hunter, knew that the contributions were, in fact, for Ms. Waites, Dr. Fox, Ms. Howard, and Ms. Hunter. There is also no dispute that an AEA representative was aware that Ms. Waites wanted her contribution returned and that it

10044260932

was not returned by the AEA. Waites Affidavit at Paragraph 13; Hunter Declaration at Paragraph 20. The total amount of the contribution submitted on behalf of Ms. Waites and not refunded is \$100. There is no information that Dr. Fox requested a refund of her contribution.

In order to ensure that contributions solicited for a separate segregated fund are voluntary, AEA, as an affiliate and potential collecting agent for the NEA Fund, had a responsibility to inform its members of the political purposes of the fund, that contributions were voluntary, that making a contribution was not a condition of employment nor membership in the Association, that members had the right to refuse to make any contribution, and that the labor organization would not favor or disadvantage anyone by reason of the amount of the contribution or the failure to contribute. *See* 2 U.S.C. §§ 441b(b)(3)(B) and (C) and 11 C.F.R. §§ 114.5(a)(3) and (4).

According to the complaint, Ms. Hunter had already submitted the contributions to the NEA Fund by the time Ms. Waites arrived. Complaint at Paragraph 11. Therefore, it is not apparent how or when any alleged solicitation to Ms. Waites by Ms. Hunter or the AEA, as potential collecting agents of the NEA Fund, could have taken place, or when the requirements of 2 U.S.C. §§ 441b(b)(3)(B) and (C) and 11 C.F.R. §§ 114.5(a)(3) and (4) could have been met. With respect to Dr. Fox's contribution, it is unclear whether the AEA State Captain, when making the solicitation on behalf of the NEA Fund, informed the delegates present of the political purposes of the fund at the time of the solicitation pursuant to 2 U.S.C. § 441b(b)(3)(B) and adhered to the requirements of 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. §§ 114.5(a)(3) and (4). Also, it

10044260933

is unclear whether Ms. Hunter solicited Dr. Fox but, if she did, it appears that Ms. Hunter did not inform Dr. Fox of her right to refuse to contribute without reprisal.

In light of the small amount at issue, the inconsistencies and gaps in the factual record, and in furtherance of the Commission's resources relative to other matters, the Commission exercises its prosecutorial discretion and dismisses the allegations that: 1) BCEA violated 2 U.S.C. § 441b(a); 2) Saadia Hunter, BCEA, AEA or the NEA Fund violated 2 U.S.C. § 441b(b)(3)(B) by failing to inform Dr. Fox and Ms. Waites of the political purposes of the NEA Fund at the time of the solicitation; 3) Saadia Hunter, BCEA, or the NEA Fund violated 2 U.S.C. § 441b(b)(3)(C) by failing to inform Dr. Fox and Ms. Waites at the time of the solicitation of their right to refuse to contribute without any reprisal; 4) BCEA, Saadia Hunter or the NEA Fund violated 2 U.S.C. § 441f; and 5) AEA violated 2 U.S.C. § 441f. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

10044260934